

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

CESAR ALTIERI SAYOC,

Defendant.

JED S. RAKOFF, U.S.D.J.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 04/05/19

18-cr-820 (JSR)

ORDER

This Court previously noted that it had received a letter from defendant Sayoc that purported to clarify statements he made during his guilty plea colloquy. The Court asked the parties to indicate in writing by April 9, 2019 whether they believed it necessary to take further action.

The Court is now in receipt of a second letter from defendant Sayoc, dated April 1, 2019, in which he states that he was under extreme stress at the time of his guilty plea and that certain answers he gave - relating mainly to his subjective understanding of the risks posed by his actions - were inaccurate. The Court still wishes to receive written submissions from the parties, addressing both this and the previous letter, and the deadline for those submissions is extended to April 12, 2019.

Additionally, the Court finds it necessary to hold an in-person hearing to address these issues. The parties are therefore directed to appear on April 15, 2019 at 2:00pm.

The Clerk of the Court is respectfully directed to docket defendant's letter along with this Order.

SO ORDERED.

Dated: New York, NY

April 5, 2019



JED S. RAKOFF, U.S.D.J.

(D)

-04/01/2019

messing

Your honor Ted S. Rakoff:

Cesar Altieri Sparse Jr. 03/17/1962 on
 March 21, 2019 at 4:00 p.m. I appeared
 in front of yourself at a Plea Herring.
 Your Honor I was not in right state
 of mind. I was over whelmed, High
 anxiety, very nervous condition, I
 Froze causing myself to not respond
 correctly.

As you could tell from my responses
 transcripts minutes 19 to 25 on page
 20, I viewed the transcript, which
 is included & noted.

(19) The Court: Well what would prevent
 for example powder from fireworks
 from exploding?

The Correct Response:

I reviewed the transcript minutes
 I was freaked out over whelmed
 nervous with anxiety.

The devices would never explode
 or worked. The fireworks were
 sparklers type. I clearly did not
 understand the question & can't
 believe my responses, as you can
 clearly see Your Honor minutes
19 - 25 Page 20

(2)

messaging

(21)

The Defendant responded wrong:

Sir: I was aware of the risk.

The Defendant right response:

Sir: I was not aware of risk.

The fireworks was a sparkler & not capable to explode.

(24)

The Defendant responded wrong to

Question: I'm sorry. I was aware of the risk that it would explode.

I clearly did not understand question.

The answer should have been: I was

not aware of risk. The fireworks was a sparkler & not capable of

exploding. I am not a chemist or scientist.

Your honor, Response to questions minutes Page 22 messaging

1 to 3 the answer statement is no.

And page 20 messaging 24 & 25. Page 21 messaging 23-25.

Page 21
23-25 The Court: OK, did you know there was a risk that would be injury to a persons?PAGE 22
mcss 1 The Defendant: Yes sir. The answer should be no. I was freaked out & over whelmed with the amount people, press & pressure overly intense high anxiety. I was in tears, emotional, nervous.

(3)

PAGE:22
MESS: 1The defendant: NoPAGE:22
MESS: 2The court : NoPAGE:22
MESS: 3

ms. Galluccio: He said "Yes".
 my meaning is No, Sir. I was
 Freaked out meaning not comprehending
 overwhelming.

I just received the Plea minutes
 today & reviewed it. 04/01/2019 at
 5:00 p.m.

Your honor I have many mental
 issues that came out overly
 emotional, Fobias, Freaked out, over
 whelmed by crowds, high anxiety,
 very nervous disorders & condition,
 unacceptable pressure.

Also the paper I read Judge
 Rakoff has written by my
 attorney & given to me the day
 of Plea at court in front of Your
 honor. I had no time to read or
 review the paper I read at court of
 what it meant.

Sincerely:
 Cesar Altieri Sayoc Jr. Cesar Altieri Sayoc Jr.
 17781-104
 MCC New York
 150 Park Row
 N.Y. 10007 11885

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Plea

1 prove every essential element of each of these 65 counts beyond
 2 a reasonable doubt?

3 MR. BOVE: Yes, your Honor.

4 THE COURT: Does defense counsel know of any valid
 5 defense that would likely prevail at trial or any other reason
 6 why her client should not plead guilty?

7 MS. GALLICCHIO: No, your Honor.

I WAS SO NERVOUS FREAKED OUT BROKE DOWN Cried
 8 THE COURT: Mr. Sayoc, tell me in your own words what
THIS IS THE PAPER MY ATTORNEY WROTE MYSELF.
 9 it is that you did that makes you guilty of these crimes.

10 THE DEFENDANT: In October 2018, I made device that
 11 were designed to look like pipe bombs and sent them through the
 12 U.S. mail. I sent a total 16 devices to people around the
 13 country. I mailed them from South Florida to George Soros,
 14 Hillary Clinton, John Brennan, Robert DeNiro, James Clapper,
 15 Barack Obama, Maxine Waters, Eric Holder, Joe Biden, Cory
 16 Booker, Kamala Harris, Thomas Steyer, and CNN.

17 I sent all of the 16 devices with the intent to
 18 threaten and intimidate people and with the intent to injure
 19 property.

20 The devices consisted of a plastic pipe with a digital
 21 alarm clock and wires attached to it. Inside the plastic pipe
 22 was powder from fireworks, fertilizer, pool shock and some
 23 glass fragments. I also put pictures of the recipients with a
 24 red 'X' over their faces inside the package.

25 THE COURT: All right. Is there anything else

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1 regarding the factual portion of the allocution that the
2 government wishes the Court to inquire about?

3 THE DEFENDANT: No, sir.

4 MR. BOVE: Couple of issues, judge.

5 First, with respect to Counts One through 16, the
6 weapons of mass destruction offenses, we ask that the Court
7 inquire whether the defendant intended the devices that he just
8 described to be used as weapons which is a component of a
9 definition of "destructive device" which folds up into the
10 definition of "WMD". That's the first request we question.

11 THE COURT: OK. You heard the government's question?

12 MS. BAUMGARTEL: Your Honor, if I may briefly? I
13 believe that the allocution we've submitted had addressed had
14 in the sense that he described that they were designed and
15 intended to look like pipe bombs and then described the
16 components that were --

17 THE COURT: Do you have a copy of what he was just
18 reading from?

19 MS. BAUMGARTEL: Yes.

20 THE COURT: Would you hand it up?

21 (Pause)

22 THE COURT: So, Counts One through 16 charge him with
23 knowingly using, attempting to use or threatening to use a
24 destructive device as defined in Title 18 U.S.C. 921,
25 specifically, improvised, explosive devices sent through the

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1 U.S. mail.

2 Now, the defendant just said in the first sentence of
3 his statement:

4 "In October 2018, I made devices that were designed to
5 look like pipe bombs and sent them through the U.S. mail".

6 So, is the question whether these were in fact devices
7 that could have exploded?

8 MR. BOVE: So there are two parts to the definition of
9 destructive device that your Honor cited in Section 921. The
10 first is capable of exploding. And I think that the
11 defendant's allocution has covered that in that he described
12 packing explosive powder into the pipe which in turn was
13 capable of exploding.

14 There's a second component of the destructive device
15 definition and I'm reading now:

16 "The term "destructive device" shall not include any
17 device that is neither designed, nor redesigned for use as a
18 weapon".

19 ~~And I don't think there's some delta between designing~~
20 something to look like a weapon which is my understanding of
21 what the allocution has reached so far and the statutory
22 definition of "design or use as a weapon". And it's a
23 distinction that I think bears very much on the defendant's
24 intent.

25 MS. BAUMGARTEL: Your Honor, in order to meet the

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elements of the statute Mr. Sayoc simply has to have threatened to use a destructive device. Whether or not that item was actually a destructive device, is not an element. So, for example, there is pretty clear --

THE COURT: Well, no -- Forgive me for interrupting.

He said the following in the later part of his allocution:

The devices consisted of a plastic pipe with a digital alarm clock and wires attached to it. Inside the plastic pipe was powder from fireworks, fertilizer, pool shock and some glass fragments.

I also put pictures of the recipients with the red 'X's over their faces inside the package.

Let's start first, Mr. Sayoc. You clearly intended that these would be used viewed as explosive devices, yes?

THE DEFENDANT: Yes, just viewed.

THE COURT: All right. Did you intend that they would in fact explode?

THE DEFENDANT: No, sir.

THE COURT: Well, what would prevent, for example, ¹⁰
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J3LAASAYP

Plea

1 THE COURT: Well, let me ask the government, is there
2 another question in this regard that you want to put to the
3 defendant?

4 MR. BOVE: No, your Honor. I think that the
5 defendant's admission just now that he was aware that they were
6 capable of exploding.

7 THE COURT: OK. Very good.

8 MR. BOVE: There's a second issue, judge.

9 THE COURT: Go ahead.

10 MR. BOVE: And this bears on the intent element with
11 respect to Counts 17 through 32, interstate transportation of
12 explosives, as well as the Counts 49 through 64, illegal
13 mailing of explosives. And we ask that the Court inquire of
14 the defendant whether he intended that these mailings would be
15 used to kill or injure another?

16 MS. BAUMGARTEL: Your Honor, the element included
17 injure property, which he said.

18 THE COURT: So sounds to me like I'm already hearing
19 the arguments I am going to hear at sentence.

20 So, you did intend that there would be potential
21 injury to property, yes? ~~injury to persons~~

22 THE DEFENDANT: Yes, sir.

23 THE COURT: OK. Did you know there was a risk that
24 there would be injury to persons?

25 I'm sorry?

J3LAASAYP

No The correct answer.

22

1 THE DEFENDANT: Yes, sir.
2 THE COURT: No?
3 MS. GALLICCHIO: He said "yes".
4 THE COURT: I'm sorry. You need to speak a little
5 louder. I'm an old man. I barely can hear what my children
6 say, let alone what you say.

7 So, I think that's sufficient, yes?

8 MR. BOVE: Yes judge. Thank you.

9 THE COURT: Anything else from the government?

10 MR. BOVE: No, your Honor. Thank you.

11 THE COURT: Anything else on any aspect of the
12 allocution from either the government or the defense?

13 MS. GALLICCHIO: No, your Honor, not from us.

14 MR. BOVE: No, your Honor. Thank you.

15 THE COURT: You mentioned each of the individuals and
16 to move this along I'll just repeat what your statement was in
17 that regard.

18 I sent a total of 16 devices to people around the
19 country. I mailed them from South Florida to George Soros,
20 Hillary Clinton John Brennan, Robert DeNiro, James Clapper,
21 Barack Obama, Maxine Waters, Eric Holder, Joe Biden, Cory
22 Booker, Kamala Harris, Thomas Steyer, and CNN.

23 I think under those circumstances we don't need to go
24 count by count, but I think we do need to go by group.

25 So first, with respect to the first 16 counts which

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